

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35489

STATE OF IDAHO,)	2009 Unpublished Opinion No. 404
)	
Plaintiff-Respondent,)	Filed: March 31, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
TRISTAR PEON ONTIVEROS,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Blaine County. Hon. Robert J. Elgee, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and GRATTON, Judge

PER CURIAM

Tristar Peon Ontiveros was indicted by a grand jury on four counts of trafficking in methamphetamine, five counts of failure to affix illegal drug tax stamps and one count of delivery of methamphetamine. Pursuant to a plea agreement, Ontiveros pled guilty to one count of trafficking, I.C. §§ 37-2732B(a), 37-2732B(c) and one count of failure to affix illegal drug stamps, I.C. §§ 63-4205(1), 63-4207(2), 63-4203(1), and was sentenced to a unified term of ten years, with seven years determinate, for the trafficking charge and to a concurrent term of two years, with one year determinate, for the failure to affix an illegal drug stamp charge. Ontiveros filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Ontiveros appeals from the denial of his Rule 35 motion, contending that the district court abused its discretion by denying his motion for reduction of sentence.

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by denying Ontiveros' Rule 35 motion for reduction of sentences. Accordingly, the order of the district court denying Ontiveros' Rule 35 motion is affirmed.